REMARKS

Claims 81-83 and 87-91 were pending in this application. Claim 83 is now cancelled without prejudice to Applicants' right to prosecute its subject matter in the present application and in related applications. Claims 81, 82 and 87-91 are currently amended without any intent of disclaiming equivalents thereof. New claims 92 and 93 are added. Accordingly, upon entry of this paper, claims 81, 82 and 87-93 are pending and presented for consideration.

Applicants wish to thank Examiner Kemmerer for the telephonic interview conducted on September 19, 2005, in which the double-patenting rejection over U.S. Patent No. 6,071,695 was discussed. Applicants also thank Examiner Kemmerer for her constructive suggestions and comments which are incorporated in this paper.

Claim amendments

Claims 81, 82 and 87-91 are amended for clarification and for consistency.

Support for new claim 92 is found in the specification at least, for example, at page 25, lines 1-14, and page 66, lines 19-22. Support for new claim 93 is found in the specification at least, for example, at page 13, lines 2-5, page 21, lines 9-15, page 24, lines 27-31, page 25, lines 1-4, and page 66, lines 25-29.

Applicants respectfully submit that the amendments to the claims introduce no new matter.

Double Patenting

The Examiner indicates in the Advisory Action that Applicants' response filed on July 25, 2005, has overcome the double patenting rejections over U.S. Patent Nos. 6,261,835; 5,863,758; 5,712,119; 5,670,336; 5,652,118; 5,614,385; and 5,585,237.

The Examiner, however, maintained her double-patenting rejection of claims 81-83 and 87-91 over U.S. Patent No. 6,071,695 (the '695 patent) because, according to the Examiner, the previously pending claims recite open claim language and thus read on claims 11, 30 and 34 of the '695 patent reciting nucleic acid constructs including OP-1 regulatory sequence and a

reporter gene. Applicants traverse the rejection to the extent it is maintained over the claims as amended.

Amended independent claims 81 and 82 each relates to a recombinant nucleotide sequence consisting of (a) an OP-1 cDNA sequence (*i.e.*, nucleotides 16-314 of SEQ ID NO:42) or (b) a sequence encoding the OP-1 C-terminal amino acid sequence or a conservative amino acid variant thereof. Applicants submit that amended independent claims 81 and 82 are readily distinguishable over claims 11, 30 and 34 of the '695 patent. First, amended claims 81 and 82 recite "consisting of" further clarifying that claims 81 and 82 are not intended to cover the OP-1 specific upstream non-coding sequence recited in claims 11, 30 and 34 of the '695 patent. Second, the sequences recited in claims 81 and 82 are clearly distinct from the "OP-1 DNA sequence" recited in claims 11 and 30 of the '695 patent. As set forth in column 5, lines 4-7, the '695 patent indicates that the OP-1 DNA sequence recited in claims 11 and 30 encompasses human OP-1 genomic sequence as shown in SEQ ID NO:1 and murine OP-1. By contrast, the sequences recited in claims 81 and 82 correspond to the human OP-1 cDNA sequence or conservative variants thereof. Claims 81 and 82 are not intended to cover human OP-1 genomic or murine OP-1 sequences. Therefore, based on at least the above two reasons, Applicants submit that claims 81 and 82 do not read on claims 11, 30 or 34 of the '695 patent that recite constructs including OP-1 specific upstream regulatory sequences and a reporter gene.

Accordingly, Applicants submit that amended independent claims 81 and 82 and the claims dependent therefrom are patentably distinct from claims 11, 30 and 34 of the '695 patent. Therefore, Applicants respectfully request the double-patenting rejection be reconsidered and withdrawn.

CONCLUSION

Claims 81-83 and 87-93 are presently pending in this application. The Examiner is invited to contact the undersigned with any questions about this paper. Early and favorable action is respectfully solicited.

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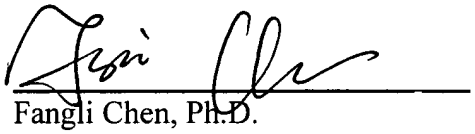
Reg. No. 51,551

Respectfully submitted,



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